

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 675 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

FAKIR RAMJUSHA JUMMASA

Versus

PRAHLADBHAI BHAICHANDAS, KARTA OF HUF

Appearance:

MR BR PARIKH for Petitioner

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/03/2000

ORAL JUDGEMENT

#. This Revision Application has been filed by the original defendant against whom respondent no.1 had filed Civil Suit No.86 of 1977 in the Court of the learned Civil Judge (JD), Kadi.

#. It is the case of the plaintiff that the defendant is

a tenant of an open plot admeasuring 4' x 4' situated near Krishna Cinema, outside Amdavadi Gate at Kadi town at a monthly rent of Rs. 30/-. That the defendant was in arrears of rent since 26.4.74. The plaintiff gave notice under section 12(2) of the Bombay Rent Act demanding arrears of rent. That the defendant failed to comply with the same. Therefore, the aforesaid suit was filed by the plaintiff for getting a decree for possession on the ground of arrears of rent.

#. The defendant appeared in the suit and filed written statement at exh.15. According to him he wanted to pay up the rent but the plaintiff was not accepting the same and subsequently he paid Rs. 148/- on 9.9.1977 and 26.9.77 and according to him, he was not in arrears of rent.

#. The Trial Court had framed various issues at exh.22.

#. The Trial Court after recording the evidence and hearing the arguments of both the sides came to the conclusion that the plaintiff has proved that the defendant was in arrears of rent for a period of more than six months and he has failed and neglected to pay the rent within one month from the date of receipt of the notice by him and therefore, on the ground of non payment of rent the Trial Court passed the decree for possession as well as arrears of Rent of Rs.120/-.

#. The decree of the Trial Court was assailed by the defendant tenant by preferring Regular Civil Appeal No. 301 of 1982 before the District Court at Mehsana.

#. Said Appeal was heard and decided by the 2nd Extra Assistant Judge, Mehsana who by his judgment and order dated 10.2.86 dismissed the same. Aforesaid order is impugned in this Revision Application.

#. At the time of hearing of this Revision Application it was vehemently argued by Mr. Parikh for the petitioner that the petitioner tenant had paid the amount of rent to the landlord as stated by him in his evidence and therefore, he was not in arrears of rent and that the suit notice was vague as there was no specific demand of arrears of rent.

#. I have gone through the judgment of both the courts below as well as the oral and documentary evidence on record and on going through the evidence I do not find

any substance in the argument of Mr.Parikh on the aforesaid count. It is not in dispute that the defendant had received the suit notice exh.27 vide postal acknowledgment exh.26 and he had not paid the arrears of rent within one month from the date of receipt of the suit notice. According to the defendant-tenant after the receipt of the notice, he had gone to the landlord to pay up the rent but the landlord has not given any receipt. However both the courts below have not found the aforesaid say of the defendant as trustworthy. The Appellate Court has observed that from exh.31 it transpires that according to the defendant he had paid the rent in the presence of one Valimahamed Issaqbhai Lugha and Alikhan but the defendant has not examined any one of them. It was therefore, found that there was no corroborative evidence available on record supporting the evidence that he has paid Rs. 148/- on 9.9.77 and on 26.9.77. The suit notice is dated 21.4.77 which was received by the defendant on 25.4.77. Therefore, if it is believed that the defendant has paid the rent as stated by him, then it can be said that he has paid the rent after 4-5 months after the receipt of the suit notice. In the circumstances, it was found by the Appellate Court that in response to the suit notice the defendant-tenant had not paid the rent within a period of one month and he can be presumed to have failed and neglected to pay the rent. Even otherwise aforesaid payment of rent after 4-5 months is also not found to be trustworthy. In para 9 of the judgment , the Appellate Court has found that the theory of so called payment of rent by the tenant cannot be not accepted . In that view of the matter, when both the courts have found that the defendant-tenant has not paid the rent within one month from the date of receipt of the suit notice, the decree for possession was rightly passed under section 12(3)(a) of the Bombay Rent Act. As held by the Supreme Court in 31(1) GLR 209 when the tenant has failed to give the rent to the landlords within one month from the receipt of the suit notice, then a decree under section 12(3)(a) of the Bombay Rent Act is required to be passed. So far as the vagueness of the notice is concerned, it has been mentioned in the suit notice that the defendant-tenant is in arrears of rent from 26.4.74 and it is also mentioned that the rent is at the rate of Rs.30/- p.m. Therefore, it has been clarified in the suit notice that he has not paid the rent. In that view of the matter it cannot be said that there was no specific demand in the suit notice. Thus there is no force in the contention of the learned advocate for the petitioner that there was no specific demand in the suit notice. In that view of the matter there is no substance in this Revision Application

and therefore, the same deserves to be dismissed. The Revision Application is accordingly dismissed. Rule is discharged. Interim relief granted earlier stands vacated. No order as to costs.

##. At this stage Mr. Parikh learned advocate for the petitioner-tenant submits that the petitioner is a poor man and he is a beggar. He further requested that in this view of the matter the decree for possession should not be executed for a period of one year from today. In the facts and circumstances of the case I direct that the decree for possession may not be executed till 31.3.2001 on condition that the petitioner shall file a usual undertaking before this court within 8 weeks from today . In the said undertaking the petitioner shall mention that he is in exclusive possession of the suit premises and that he will not transfer or alienate the suit property to any one and without obstructing in any manner he will hand over the vacant and peaceful possession to the respondent on or before 31.3.2001. The petitioner shall continue to pay the mesne profit regularly during the aforesaid period. If the petitioner fails to file the undertaking within 8 weeks from today or if the petitioner commits any breach of the said undertaking it will be open for the landlord to execute the decree for possession forthwith.

(P.B.Majmudar.J)

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